IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6955 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

HAIDARKHAN LALKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6955 of 2001

MR ANIL S DAVE for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on May 5, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said

Act.

2. The detaining authority took into consideration three offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a dangerous person as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr.Shukla, learned advocate appearing for Mr. Anil Dave, learned advocate for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on 1.5.2001 and the order detention was passed on 2.5.2001. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. Mr. Shukla submitted further that the offences registered against the detenu are of 1999 and 2000 and, therefore, there is no livelink between the offences registered against the petitioner and the order of detention. He, therefore, urged that the petition may be allowed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on April 30, 2001. The same have been verified by the detaining authority on May 1, 2001 and the order is passed on May 2, 2001. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need

for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. Adverting to the offences registered against the detenu, they relate to the year 1999 and 2000. Therefore, they are stale cases and there is no livelink between the offences registered against the petitioner and the order of detention. Therefore, the subjective satisfaction recorded by the authority for immediately preventing the petitioner from pursuing his activities is vitiated.

7. Neither the statements nor the offences registered against the petitioner form a valid ground for detention. In this view of the matter, the petition deserves to be allowed.

8. In the result, the petition is allowed. The impugned order of detention dated May 2, 2001, passed against the detenu is hereby quashed. The detenu-Haidarkhan Lalkhan Pathan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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